IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE T.R.RAMACHANDRAN NAIR

FRIDAY, THE 3RD AUGUST 2007 / 12TH SRAVANA 1929

WP(C).No. 11539 of 2005(W)

PETITIONER:

K.N.SADANANDAN(S.L.PURAM SADANANDAN),
YAVANIKA, S.L.PURAM P.O., P.B.NO.4,
ALAPPUZHA-688 523.

SUPPL. PETITIONER IMPLEADED

V.P.OMANA, W/O. LATE K.N.SADANANDAN
(S.L.PURAM SADANANDAN)
AGED 65, "YAVANIKA" S.L.PURAM P.O.,
P.B. NO.4, ALAPPUZHA 688 523.

IMPLEADED VIDE ORDER DT. 3.1.06 IN IA. 19082.05.

BY ADV. SRI.K.K.SATHEESH
SRI.K.K.SATHEESH

RESPONDENTS:
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1. **UNION OF INDIA REP.BY THE SECRETARY,**
MINISTRY OF HOME AFFAIRS,
FREEDOM FIGHTER'S DIVISION,
LOK NAYAK BHAVAN, NEW DELHI 110 003.

2. **STATE OF KERALA REP.BY THE SECRETARY,**
TO GOVERNMENT GENERAL ADMINISTRATION(FFP.A)
DEPARTMENT , GOVERNMENT SECRETARIAT,
THIRUVANANTHAPURAM.

BY ADV. SMT.MINI R.MENON, ADDL.CGSC
GOVERNMENT PLEADER SRI.V.T.K.MOHANAN

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 03/08/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

T.R. Ramachandran Nair, J.

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W.P.(C).NO.11539 of 2005-W

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Dated this the 3rd day of August, 2007

JUDGMENT

This writ petition was originally filed by the petitioner Shri K.N. Sadanandan who died pending the writ petition and his widow has got impleaded herself as supplementary petitioner which has been allowed as per order dated 3.1.2006 in I.A. No.19082/2005.

2. The late husband of the supplementary petitioner was a prominent freedom fighter who was striving to get sanction of pension under the S.S.S. Pension Scheme. Ext.P15 is the order under challenge in this writ petition. In fact, earlier by Ext.P13 produced herein, the Government of India had rejected his application which was challenged before this court in O.P.No.34496/2002. Ext.P14 is the judgment in the said original petition. In Ext.P14 judgment, the learned single judge had held that "none of the grounds stated in Ext.P15 are valid in law for rejecting the claim of the petitioner." The first respondent was directed to pass fresh orders regarding the petitioner's claim. What remained to be done was only to issue a sanction for pension to the petitioner, especially since no Writ Appeal has been filed against the judgment Ext.P14. But contrary to the tenor of the

findings in the judgment, again the very same reasons stated in the order that was quashed, is reiterated in the present order, Ext.P15. Since the findings in Ext.P14 judgment have become final, the respondent was not right in reiterating the very same reasons which were interfered with by this court in Ext.P14, while passing Ext.P15 order. On this short ground, Ext.P15 is unsustainable in law.

3. For the just determination of the issues, a resume of the facts of the case is needed. The late husband of the additional petitioner was a freedom fighter who had actively participated in the Punnapra – Vayalar Struggle which is recognised as part of the freedom struggle. Apart from being a freedom fighter, he was a professional writer and a social activist, popularly known as "S.L. Puram". He was honoured by the Government of India by conferring "Thamrapatra" in connection with the 25th Anniversary of India's Independence. This is evidenced by Ext.P2 letter dated 4.8.1973 issued by the District Collector, Alappuzha to the petitioner. The deceased petitioner was also a recipient of Kerala Freedom Fighters' Pension with effect from 5/5/1973 as evidenced by Ext.P1 proceedings of the District Collector, Alappuzha.

4. The Punnapra - Vayalar Struggle was recognised by the Government of India for the purpose of grant of pension under the Central

Scheme, with effect from 20.1.1998. Immediately, as per Ext.P3 application dated 20.4.1998, the late Shri Sadanandan approached the Central Government for grant of S.S.S. Pension. It is stated that an arrest warrant was issued against him in case No.P.E.8/1122 M.E. by the Special Magistrate Court, Alappuzha and to evade arrest, he had gone underground for a period of seven months from October 1946 to May 1947. Later, he was arrested by the police and was detained in Alleppey Sub Jail as an under-trial prisoner along with Shri P.A. Solomon, Ex.M.P. It is the further case of the deceased petitioner that he was convicted and sentenced to undergo imprisonment for a period of six months and accordingly he had undergone imprisonment at the Central Jail, Trivandrum for a period of six months. The petitioner is relying upon the Personal Knowledge Certificate issued by prominent freedom fighter Shri V.K. Karunakaran and Shri Kunjan Sukumaran which are produced as Exts.P4 and P5. The co-prisoner's certificates issued by Shri P.A. Solomon, Ex.M.P. is produced as Ext.P6. Pursuant to the direction issued by the District Collector as per Ext.P7 to produce various records, the deceased petitioner had produced the non-availability of records certificate (NARC) issued by the Superintendent of Special Sub Jail, Alappuzha and the Central Prison, Trivandrum. These are produced herein as Exts.P8 and P9. The District Collector had

forwarded these documents also to the second respondent as per Ext.P10.

5. Earlier, the late husband of the additional petitioner had approached this court by filing O.P.No. No.30550/1999 which was disposed of by Ext.P11 judgment directing the Central Government to take appropriate action in the matter. Thereafter, the second respondent forwarded the petitioner's application to the Central Government which is evidenced by Ext.P12 communication. It is thereafter that Ext.P13 order was passed rejecting the application for pension.

6. A reading of Ext.P13 shows that the main reasons for rejection were that he did not produce official records to support his claim, that the internment certificates from Shri Kunjan Sukumaran and Shri Ittiyathi Vasudevan are contrary to his claim for imprisonment for one year, that the non availability of record certificates of Sub Jail, Alappuzha and Central Prison, Trivandrum and the co-prisoner certificate issued by Shri P.A. Solomon, do not serve any purpose and that the co-prisoner certificate is not supported by the jail records of the certifier. It is also stated that the certificates of Shri V.K. Karunakaran and Shri Kunjan Sukumaran are contrary to the claim for internment raised by the petitioner. The very sufficiency and validity of these reasons have been discussed in detail in Ext.P14 judgment. A reading of the judgment will show that all the said

reasons pointed out have been reversed after finding that every one of them are not sustainable and not valid in law. The learned Single judge considered the requirements of the basic scheme and held that as regards the claim that the petitioner remained underground evidence in terms of clauses (a) and (b) of para 2.3 and explanation will be sufficient. Under clauses (a) and (b) either documentary evidence by way of court's/Government's orders to prove arrest or detention or secondary evidence in the form of personal knowledge certificate from prominent freedom fighters who have proven jail sufferings of a minimum two years will be sufficient. In paragraphs 3 and 4 of the judgment, after referring to the above requirements of the scheme, the learned Single judge was pleased to consider the sufficiency of the certificate Ext.P5 issued by Shri V.K. Karunakaran, a co-prisoner and a prominent freedom fighter (Ext.P4 herein). The very validity of a certificate issued by Shri V.K. Karunakaran was upheld by a Division Bench of this court in **Pappu Kesavan v. Union of India** (1996 (2) KLT 1035). After following the dictum laid down therein and after referring to the NARC issued from the authorities concerned, it was found that there is no contradiction in the certificate issued and the claim made in Ext.P4 was only based on the fact that he

remained underground which is supported by the certificate issued by Shri V.K. Karunakaran. His Lordship was pleased to find that Ext.P6 is not contrary to Ext.P5 and after entering findings on those aspects, viz., as regards the internment certificates issued by Shri Kunjan Sukumaran, Ittiyathi Vasudevan and Shri V.K. Karunakaran, it was held that those are acceptable to satisfy the claim. Ultimately, it was held therefore that none of the grounds stated in Ext.P15 therein are valid in law for rejecting the claim of the petitioner. The question whether the absence of recommendation by the State is material or not, also was considered in paragraph 5 wherein it was held that that contention is also not sustainable.

6. Ext.P15 order was passed by the Union of India thereafter. Again they have failed to consider the claim on its merits in spite of the specific findings wherein the reasons stated in Ext.P13 have been reversed. Therefore, what was remaining to be done was only the sanction for pension. Learned counsel for the petitioner pointed out that paragraph 2 of Ext.P15 is the same as paragraph 3 in Ext.P13 and paragraph 3 in Ext.P15 is the same as paragraph 4 in Ext.P13. Similarly, paragraphs 4 and 5 in Ext.P15 are the same as paragraph 2 in Ext.P13. In paragraph 1 of Ext.P15 an attempt is made to show that the claim for imprisonment made by him is not correct. In fact, the said issue also is covered by the judgment Ext.P14

as this court was pleased to find that "it is true that the petitioner's claim as a co-prisoner or as a convict was not substantiated as contemplated under the Scheme, and therefore I find that rejection of his claim on the ground of under-trial prisoner or as convict cannot be considered by the authorities." Therefore, the finding regarding that aspect in Ext.P15 was not required to be done at all. Therefore, as rightly pointed out by learned counsel for the petitioner, the validity of the said finding need not be gone into in this writ petition in view of Ext.P14 judgment.

7. In Ext.P15, again the Government of India has entered a finding that the certificate issued by Shri P.A. Solomon is contrary to the claim for underground sufferings made by the late petitioner, that the certificate of Shri V.K. Karunakaran is not acceptable and that as regards the certificates issued by Shri Kunjan Sukumaran and Shri Ittiyathi Vasudevan are concerned, the same are contrary to the claims of underground sufferings. As regards these findings, it is as pointed out by me earlier, all those findings have been reversed in Ext.P14 judgment in paragraphs 3 and 4. In fact, in Ext.P15, a decision of the Patna High Court in the matter of CWJC NO.10450 of 2000 dated 23.10.2000 is also mentioned and the said decision has been dissented by this court in the decision reported in 2005 (2) KLT SN page 61, case No.73.

8. What follows is that the order Ext.P15 has no legs to stand and it is hereby quashed. The order has been passed without any application of mind and without following the specific directions of this court in Ext.P14 judgment. Government was not right in ignoring the findings rendered by this court on the merits of all the reasons stated in Ext.P13 which are the very same reasons stated in Ext.P15 also. The authorities have approached the question in a hyper technical manner which has been deprecated by the Supreme Court in **Gurdial Singh v. Union of India** ((2001) 8 SCC 8) and subsequent decisions. Their Lordships have declared that a freedom fighter is entitled for respect and honour and the approach should be liberal also.

9. Hence, it is declared that the petitioner is entitled for the benefit of S.S.S. Pension. The first respondent will pass orders sanctioning the same including arrears from the date of Ext.P3, within a period of Three months from the date of receipt of a copy of this judgment.

The Writ Petition is allowed as above. No costs.

(T.R. Ramachandran Nair, Judge.)

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O.P. No.

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JUDGMENT

3rd August, 2007.